

MUNICIPAL ORDER 10-2023

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH CRANDALL'S BYPASS, LLC PROVIDING FOR THE CONSENSUAL ANNEXATION OF UNINCORPORATED PROPERTY LOCATED IN DAVIESS COUNTY AT 155 SALEM DRIVE, CONTAINING A TOTAL OF 2.502 ACRES, MORE OR LESS; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE CRANDALL'S BYPASS, LLC ONE HUNDRED PERCENT (100%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), NET PROFITS, AND OCCUPATIONAL TAX REVENUES DERIVED FROM THE PROPERTY OVER A DESIGNATED FIVE (5) YEAR PERIOD.

WHEREAS, Crandall's Bypass, LLC is the owner of real property consisting of 2.502 acres, more or less, located at 155 Salem Drive; and

WHEREAS, said property is zoned B-5 Business/Industrial; and

WHEREAS, Crandall's Bypass, LLC's property, which is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City, when annexed, developed, and/or sold, will utilize and benefit from, applicable municipal services; and

WHEREAS, the social and economic wellbeing of the City is directly related to, and in many respects dependent upon, the substantial growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous industrial, commercial, and/or residential developments to become

citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Crandall's Bypass, LLC to incorporate the real property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the City desires to reimburse Crandall's Bypass, LLC in the amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from the property located therein, over a designated five (5) year period.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with Crandall's Bypass, LLC setting forth the terms and conditions by which the 2.502 acre tract of land located at 155 Salem Drive will be consensually annexed into the City of Owensboro, in consideration for the City agreeing to reimburse Crandall's Bypass, LLC in the amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from the property located therein, over a designated five (5) year period. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 21st day of February, 2023.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of February, 2023, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as “City”), and CRANDALL’S BYPASS, LLC., 130 Salem Drive, Owensboro, KY 42303, (hereafter referred to as “Developer”). City and Developer are each a “Party” and collectively the “Parties”.

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 2.502 acres, more or less, which is located at 155 Salem Drive, Owensboro, KY (hereinafter referred to as “Subject Property”); and

WHEREAS, Developer’s property is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City and, when annexed, developed, and/or sold, will utilize and benefit from various municipal services; and

WHEREAS, the City of Owensboro has established an annexation incentive program for a development for the purposes of eligibility for incentives; and

WHEREAS, Developer wishes to grant its consent and voluntarily participate in the City annexation incentive program whereby Subject Property shall be annexed into the corporate limits of the City of Owensboro; and

WHEREAS, the social and economic well-being of the City is directly related to, and in many respects dependent upon, the growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous commercial developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Developer to incorporate Subject Property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the Parties enter into an agreement by which the City will reimburse the Developer in an amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from any property located therein, over a designated five (5) year period of the annexation agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

SECTION 1. ANNEXATION: Subject Property shall be annexed into the City pursuant to KRS 81A.412. In consideration of the foregoing, Subject Property shall remain a private development within the property to be annexed,

including streets, alleys, curbs, gutters, parks, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, and common areas), on the final development plan and the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk.

SECTION 2. INCENTIVES; CALCULATION OF TAX REVENUES;
LIMITATIONS.

(A) Under the terms of this Agreement, the City will reimburse the Developer in an amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and general fund occupational tax revenues derived from any property located therein, over a designated five (5) year period.

(B) Expenses to be reimbursed by City to Developer under this Agreement shall be paid solely from all real and personal property, general fund occupational, and net profits tax/fee revenues (excluding school taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City, hereafter referred to as "Tax Revenues," over a maximum period of five (5) years (the "Reimbursement Term"). The City's obligation to reimburse Developer shall commence on the first day of the next fiscal quarter after the five (5) year term begins.

(C) It is understood that all reimbursements provided in this Agreement shall be made solely to the present Developer and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(D) Accounting:

(1) The Director of Finance and Support Services is authorized and directed to collect and deposit all Tax Revenues derived by the City from Subject Property annexed hereby, in a separate, dedicated account established for the property incorporated by the City through consensual annexation over a designated five (5) year period. To assist the Finance Department in tracking Tax Revenues derived from the development, sale, and/or lease of real and personal property within Subject Property, Developer shall, at its own expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of Subject Property.

(E) It is agreed that in the event the Developer sells, transfers and/or leases any part of Subject Property, Developer shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be paid directly to the Developer regardless of who owns and/or leases the property provided the Developer is in compliance with all terms of this Agreement.

(F) Payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to Subject Property, the payment will be withheld until a proper reporting has been received and processed. City and Developer agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Developer.

(G) Limitation on Reimbursement of Expenses:

1. The City's maximum liability to Developer for reimbursement shall not exceed one hundred percent (100%) of the total verified sum of all Tax Revenues collected by the City over a designated five (5) year period.

SECTION 3. TERM: This Agreement shall commence upon its execution by both Parties and the reimbursement term shall begin within one (1) year of execution. This Agreement shall remain in full force and effect for the duration of the designated period, or until such time as all terms and conditions set forth herein have been satisfied, whichever first occurs. At the end of the reimbursement term, this Agreement shall be null and void.

SECTION 4. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more

of the terms and conditions set forth herein, including failure to timely complete all public improvements as per applicable ordinances, Planning and Zoning requirements, and the City's Private Development Policy which is incorporated herein by reference as Exhibit A, and fails to cure said breach within a reasonable time after written notice thereof. This Agreement may be terminated by Developer in the event the City fails to reimburse Developer on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this Agreement by either Party, the non-breaching Party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, however, the City's total liability shall not exceed one hundred percent (100%) of the total verified sum of all Tax Revenues collected by the City from Subject Property.

SECTION 5. NOTICES: Any written notices or requests required under the terms of this agreement shall be given to the following:

CITY:

City of Owensboro
Attention: City Manager
P. O. Box 10003
101 East 4th Street
Owensboro, Kentucky 42302-9003

DEVELOPER:

Crandall's Bypass, LLC
130 Salem Drive
Owensboro, KY 42303

SECTION 6. AGREEMENT NULL AND VOID: This Agreement shall terminate, and otherwise become null and void, and neither Party shall have any further liability to the other, if Subject Property described herein is not incorporated into the City by the Owensboro Board of Commissioners or the Commonwealth of Kentucky through consensual annexation or, if for any reason, the Subject Property is de-annexed at any time.

SECTION. 7. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

SECTION 8. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is

invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither Party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO:

By _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

By _____
Ken Crandall, Member

EXHIBIT A
Private Development Policy
City Engineer's Office
August 20, 2019

The following is the City Engineer's policy on the review of plans, the release of bonds, and the acceptance of maintenance of public improvements for private development:

Plan Review:

The City Engineer's office recognizes that any delay in the review of plans could result in costly expenses to any developer. However, the City Engineer's office also needs a sufficient amount of time to review plans properly. Due to this, the City Engineer's office will commit to performing the review of most plans in a timely manner as stated below. If there is any exception to this timeline, the City Engineer's office will notify the developer's engineer as soon as possible.

The City Engineer will only review a complete set of development plans. This includes a complete plan set, the erosion control plans, and the completed drainage calculations with its drainage summary in a drainage folder. Any partial submittal will be logged and placed in the file without review until the entire set is submitted. Once a complete set of development plans has been received, the plan review process will begin. The City Engineer will attempt to complete the initial plan review process in two (2) weeks (10 working days). The mark-up plans and comments will be returned to the developer's engineer. The City Engineer will attempt to complete any subsequent review in one (1) week (5 working days) unless a complete redesign has been done.

It has been brought to our attention that the developer would like to have one (1) week to look over our comments in case he wishes to make changes. This is understandable; however, the schedule will have to be set up by the developer's engineer in order to allow for the time schedule set out above.

All plan and drainage folder review is for completeness and compliance only. The review does not include a check of the design calculations, the field survey, the engineering accuracy nor the accuracy of the field survey. The sign-off of the plans by the City Engineer's office does not relieve the developer's engineer of any liability for sound engineering judgment and/or accuracy.

Additional Permits:

A Cut and Fill permit will be required prior to the start of any dirt work on any project. The Cut and Fill permit can be obtained through the City Engineers Office. The Cut and Fill permit will not be signed off on until the Notice of Intent (NOI) is submitted to the Kentucky Division of Water (DOW), and the NOI, the Storm Water Pollution Prevention Plan (SWPPP), and all required Corps of Engineers (COE) and DOW permits have been submitted to the City Engineer's office.

Surety Performance Bond Review:

All development in the City of Owensboro will require a surety performance bond of some form to be submitted to the City Engineer. The Unit Prices as established by the Public Improvement (PI) Spec Committee will be used to set all bond amounts, as well as to perform bond updates. However, the Surety Performance Bond shall be considered as a Lump Sum Bond, not as a unit specific bond.

The City Engineer's office recognizes that any delay in the review of surety performance bonds may also result in costly expenses to any developer. However, the City Engineer's office needs a sufficient amount of time to review plans in order to become properly familiar with the project. Due to this, the City Engineer's office will commit to performing the review of most surety performance bonds in a timely manner as stated below. If there is any exception to this timeline, the City Engineer's office will notify the developer's engineer as soon as possible.

The City Engineer will complete the review of most surety performance bonds in a one week (5 working days) period. This includes the start-up of any bond, or the full release of any bond. The exception will be for larger developments that will require extensive field work and review. The comments will be returned to the developer or his engineer. Any subsequent reviews will be performed in three (3) working days.

Surety Performance Bond Format:

Any form of bond currently acceptable by the Owensboro Metropolitan Planning Commission (OMPC) is also acceptable by the City Engineer's office.

Surety Performance Bond Update Schedule:

All bonds shall be renewed and updated every two (2) years after the initial date of the bond. Any time a bond is renewed, it shall be updated to the current unit price rates as specified by OMPC on the recommendation of the PI Spec Committee.

Any bond currently active as of the effective date of this policy shall be given extra time. These bonds shall be completed and closed or updated within two (2) years of the effective date of this policy.

Maintenance Bond:

A Maintenance Bond will be required for all public improvements which fall under the jurisdiction of the City Engineer, which upon final acceptance, the responsibility for maintenance fall under the purview of the City, including "common sidewalks" but excluding "residential lot associated sidewalks." This will be a lump sum bond that is equal to five percent (5%) (minimum of \$5,000.00 per unit) of the total for public improvements not yet accepted as calculated by the unit prices as established by the PI Spec Committee. It is the policy of the City Engineer's office to release the Maintenance Bond after the unit has been accepted, with acceptance requiring that one hundred percent (100%) of the public improvements have been installed and required corrective work has been completed of the unit bonded. If any items in the bonded unit are being

used as a Best Management Practice (BMP) in the SWPPP of non-completed units, then the Maintenance Bond will be maintained intact until those items are no longer BMP's, and the subject area is stabilized, or the Lump Sum maintenance bond can be replaced by a new Maintenance Bond that addresses only the erosion control. The release of the maintenance bond will be decided on a case-by-case basis to determine if other issues exist that may also deem the holding of the Maintenance Bond necessary.

Bond Release Minimum:

Minimum amount for a bond release will be \$2,500.00.

Street DGA:

Once all Street DGA has been placed to the satisfaction of the City Engineer's Office, the developer may request one hundred percent (100%) release of the amount for the DGA surety performance bond. The developer is still responsible for the maintenance of the DGA, including cleaning of mud and other normal construction means and methods until the lump sum Maintenance Bonds are released.

Curb and Gutter:

Once all Curb and Gutter has been placed to the satisfaction of the City Engineer's Office, the developer may request one hundred percent (100%) release of the amount for the Curb and Gutter surety performance bond. The developer is still responsible for the maintenance of the Curb and Gutter until the lump sum Maintenance bonds are released. This release does not relieve the developer of keeping mud and other debris out of the Curb and Gutter.

Street Base Asphalt:

Once all Street Base Asphalt has been placed to the satisfaction of the City Engineer's Office, the developer may request one hundred percent (100%) release of the amount for the Street Base Asphalt surety performance bond. The developer is still responsible for the maintenance of the Street Base Asphalt until the lump sum Maintenance bonds are released. This release does not relieve the developer of keeping mud and other debris out of the Base Asphalt.

Street Surface:

Street Surface will not be allowed to be placed until the installed asphalt base has been exposed to a minimum of two (2) winter seasons for Local and Collector streets and three (3) winter seasons for Arterial streets. Petition by the developer to the City Engineer or directive by the City Engineer to the developer to install surface outside of the above timeline shall be considered on a case-by-case basis with the determining factor to be action taken in the best interest of the City.

Under no circumstances will the installed base asphalt be allowed to be exposed to more than four (4) winters without being covered with surface asphalt. If the developer does not apply the surface asphalt by October prior to the fifth winter, the City of Owensboro will cash in the surety performance and maintenance bonds and complete the placement of the surface.

Once all Street Surface has been placed to the satisfaction of the City Engineer's Office, the developer may request one hundred percent (100%) release of the amount for the Street Surface bond. The developer is still responsible for the maintenance of the Street Surface until the release of the lump sum Maintenance bond.

Residential Single Lot Developments:

(Single Family Attached, Condominiums, and Townhouses)

Sidewalk:

The sidewalk adjoining each lot of record shall be installed, inspected and approved before a Certificate of Occupancy (CO) for the structure on the lot will be approved by the Owensboro Metropolitan Planning Commission. A request for final inspection of sidewalk must be submitted to the City Engineer a minimum of five (5) business days before the scheduled final inspection of the structure. Sidewalks will be inspected for compliance with the current PI Specifications and current Department of Justice ADA regulations.

If the sidewalk fails inspection, repair or replacement is required before the CO is obtained or if the sidewalk can't be installed (due to current weather, temperature conditions) the property owner shall post a surety performance bond to proceed with obtaining the Certificate of Occupancy. The bond amount shall be determined by the unit length of walk to be installed/repared multiplied by the bond rate specified by the PI Specification committee, or \$2,000.00, whichever is greater. A certified check will be required as surety. Sidewalk shall be installed/repared within one calendar month of issuance of the Certificate of Occupancy or by the following April 15, if weather/temperature was the cause of the delay. If the owner fails to meet this deadline, the City Engineer will utilize all of the surety to have the sidewalk installed/repared.

The sidewalk that is adjoining common areas (retention basins, parks, etc.) is required to be installed before the approval of the final plat or surety will be posted for this item. Common areas sidewalk PI calculations/ surety performance bonding will be included on calculating Maintenance Bond posting five percent (5%) requirements. Sidewalks installed as part of the developed unit, which when the unit is accepted and maintenance responsibility will then be under the City's purview, will remain the developer's responsibility until that unit is accepted by the City. Lump Sum maintenance bond utilization is applicable for these areas, both "common" and "residential lot" connected sidewalks.

If the developer chooses to place sidewalk on any lot prior to construction on that lot, the sidewalk shall be 6" thick across the entire lot width.

All sidewalks will be required to be installed within five (5) years of final plat. Owner(s)/ Developer(s) may petition the City Engineer for an extension of time to install the sidewalk. Extension considerations will be evaluated on a case-by-case basis.

ALL OTHER DEVELOPMENTS

Surety will be required for all public sidewalks that have not been constructed at the time of final plat. Once all sidewalks has been placed to the satisfaction of the City Engineer's office and the development is complete on any particular lot, the developer may request the release of one hundred percent (100%) of the bond for sidewalk across that lot as long as the total requested bond release meets the bond release minimum stated above. If the developer chooses to place sidewalk on any lot prior to construction on that lot, the sidewalk shall be 6" thick across the entire lot width.

Storm Sewer Systems of all types, Excluding Basins:

Once Storm Sewer System has been installed UNDER THE DIRECT INSPECTION of the City Engineer's office, and once the unit of the development that drains through a particular section of a storm sewer system is one hundred percent (100%) complete and stabilized per KYR10, then an inspection will be done of the system at the City's expense. Any debris, silt, mud, etc., found in the system shall be removed by the developer to the City Engineer's satisfaction. Any spot repairs of the system will also be done at the developer's expense. At this time, the developer may request a full release of one hundred percent (100%) the bond for each individual item. However, if any items in the bonded unit are being used for BMP or SWPPP the developer may provide a replacement maintenance bond to release the lump sum Maintenance bond.

If the developer fails to notify the City Engineer's office prior to the installation of any storm sewer system, the developer shall prove to the City Engineer's office the system was installed per the PI Specification at the developer's expense. This could include, but is not limited to:

- 1) TV-ing of system
- 2) Pothole
- 3) Complete uncovering

Detention/Retention/Mitigation Basins:

The following items shall be completed prior to the developer requesting full release of the bonds on any basins:

- 1) If the basin is to be used as a BMP in the SWPPP, then one hundred percent (100%) of the area draining into the basin shall be completed and stabilized per KYR10 prior to the request for the full release of bond. The silt must be cleaned out of the basin, and the basin restored to the plan dimensions. All banks and side slopes shall be stabilized per the plan, and sufficient ground cover established. The developer shall hire a Professional Engineer licensed in Kentucky to certify the basin was constructed to plan dimensions and slopes, was constructed to achieve the designed capacity, and that it is no longer a BMP in the SWPPP. (See sample language and detail below). The certification shall coincide with the full release request.

2) If the basin is not to be used as a BMP in the SWPPP, then the developer may request a full release of the bonds upon the completion of the following items:

- a) The silt must be cleaned out of the basin
- b) The basin must be restored to the plan dimensions
- c) All other BMP's in the SWPPP upstream of the basin shall be in place and maintained at all times.
- d) The developer shall hire a Professional Engineer licensed in Kentucky to certify the basin was constructed to plan dimensions and slopes, was constructed to achieve the designed capacity, and that it is not a BMP in the SWPPP. (See sample language and detail below).

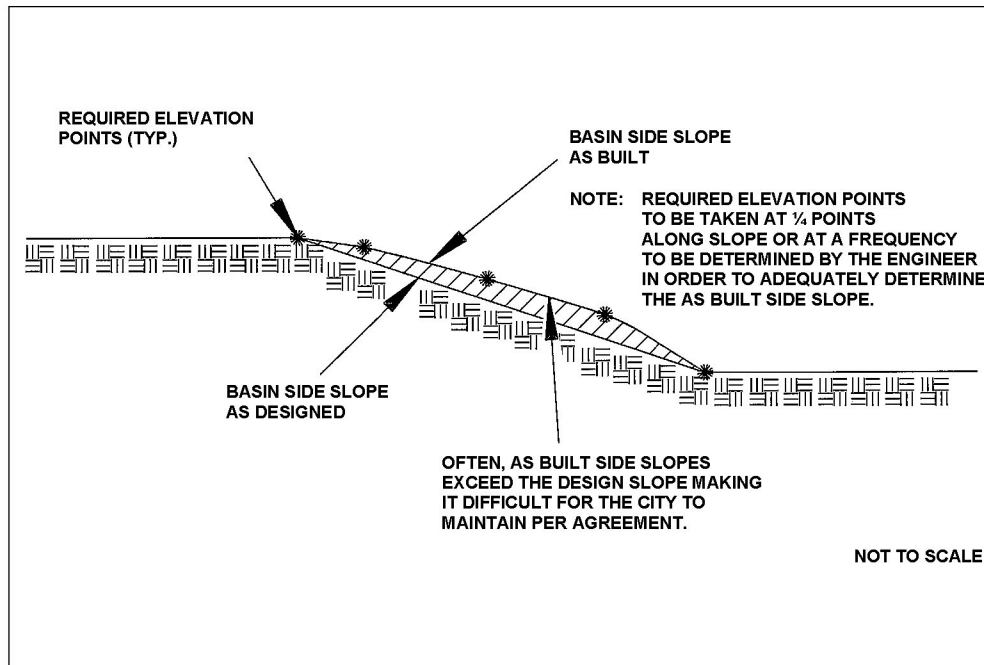
At this point, the developer may request a full release of the bond. The release of the bond of the basin does not release the developer from the liability should any silt deposit in the basin due to a failed BMP upstream.

Private basins shall be certified. The developer shall hire a Professional Engineer licensed in Kentucky to certify the basin was constructed to plan dimensions and slopes, was constructed to achieve the designed capacity, and that it is no longer a BMP in the SWPPP. (See sample language and detail below). The certification shall coincide with the full bond release request of the associated development.

Sample Language:

"I certify the subject basin was constructed per plan dimensions. The maximum slopes dimensioned in the plans are _____. The in-place slopes are _____. The drainage report specified a capacity of _____ acre-feet of storage in the basin. The as-built storage of the basin is _____ acre-feet. The basin (is no longer/has never been) used as a BMP in the SWPPP."

Detail of Required Elevation Points:



Traffic Control:

The developer is responsible for all traffic control through the development until final surface is placed and all bonds have been released. This includes, but is not limited to the control of traffic around manholes and inlets that are higher than the existing grade of the driving surface.

Storage of Material:

Storage of building materials shall not be allowed in the Right-of-Way during the construction of any improvements.